



Decision and Statement of reasons of Mrs Jan Todd, Legal Member of the First-tier Tribunal for Scotland (Housing and Property Chamber) with delegated powers of the Chamber President.

Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)

Case Ref: FTS/HPC/EV/17/0509

Re: Property at Flat 6 Lorne Court, 94 West Blackhall Street, Greenock PA15 1XG

Parties: David McCrystal

(“the Applicant”)

Ms Veronica Gavin

(“the Respondent”)

1. On 17th December 2017 an application was received from the applicant via his solicitor. The application was made under Rule 65 of the Rules being an application by a private landlord for possession of a rented property let under an Assured Tenancy in terms of S18(1) of the Housing Scotland Act 1988.

The following documents were received:-

1. Copy tenancy agreement dated 23rd February 2015
2. Copy notice to quit
3. Copy Form AT5
4. Copy S33 notice
5. Copy Form AT6 together with a paper apart
6. Intimation of service of notices from Sheriff Officers
7. Copy S11 notice to Inverclyde Council
8. Rent statement

2. In terms of the tenancy agreement the Applicant is noted as the Landlord and the Respondent is noted as the Tenant. The tenancy agreement commenced on 23rd February 2015 and was for an initial period of 6 months to 23rd August 2015. In terms of clause 20 of the lease if neither party serves a valid Notice to Quit the lease will continue by virtue of tacit relocation. A Notice to Quit has been served by the

Applicant on the Respondent on 27th November 2017 requiring the Respondent to quit the Property by 23rd February 2018 which is the date the current tenancy expires. There is no provision within the Tenancy Agreement for the agreement to be brought to an end on the basis of Grounds 11,12 and 14 of Schedule 5 of the Housing (Scotland Act) 1988 (The Act), the grounds which the Applicant is relying on in his application. There is reference in clause second of the Tenancy Agreement to Ground 2 of the Schedule 5 of the Act being a ground for passion.

3. DECISION

I considered the application in terms of Rule 8 of the Rules and that Rule provides:-

“Rejection of the Application

8. (1) *The Chamber President or another member of the First Tier Tribunal under delegated powers of the Chamber President must reject an application if:-*

- a) they consider that the application is frivolous or vexatious*
- b) the dispute to which the application relates is resolved*
- c) they have good reason to believe that it would not be appropriate to accept the application*
- d) they consider the application is being made for a purpose other than a purpose specified in the application or*
- e) the applicant has made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First Tier Tribunal under delegated powers of the Chamber President there has been no significant change in any material considerations since the identical or substantially similar application was determined.*

(2) Where the Chamber President or another member of the First Tier Tribunal under delegated powers of the Chamber President, makes a decision under paragraph 1 to reject an application the First Tier Tribunal must notify the applicant and the notification must state the reasons for the decision.

5. After consideration of the application, the attachments and the correspondence from the Applicant I consider that the Application should be rejected on the basis that it is frivolous in terms of Rule 8(1) (a) of the Rules.

6. Reasons for the Decision

“Frivolous” in the context of legal proceedings is defined by Lord Justice Binham in *R v North West Suffolk (Mildenhall) Magistrates Court (1998) Env. L.R. 9* At page 16 he states:-

What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic” it is that definition which I have applied as the test in this application and, on consideration of this test I have determined that this application is frivolous, misconceived and has no prospect of success.

7. S18 (6) of the Act provides:-

S18 (6) - The First Tier Tribunal shall not make an order for possession of a house which is being let on an assured tenancy, not being a statutory assured tenancy, unless_ (a) the ground for possession is Ground 2 or Ground 8 in Part 1 of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question”

(2) There are only two types of assured tenancy: - a contractual assured tenancy and a statutory assured tenancy. A contractual assured tenancy once terminated becomes a statutory assured tenancy in terms of Section 16(1) of the Act. Accordingly it follows that where a contractual assured tenancy is in operation; the First Tier Tribunal cannot make an order for possession unless the requirements of section 18(6) are met

8. A Notice to Quit has been served on 27th November 2017 but the function of it is to stop tacit relocation and it will terminate the tenancy at the expiry of the Tenancy Agreement, which in this case, as narrated in the Notice to Quit, is 23rd February 2018. Accordingly the Tenancy Agreement in this application is currently a contractual assured tenancy.

9. The Tenancy Agreement does not make provision for it to be brought to an end on any of the grounds specified in Application namely Grounds 11, 12 and 14 of Schedule 5 of the Act and as this is a requirement of S18 (6) the requirements of that subsection are not met and the application falls to be rejected on the basis that it is frivolous.

What you should do now:-

If you accept the decision there is no need to reply.

If you disagree with the decision then an applicant aggrieved by the decision of the Chamber President, or another member of the First Tier Tribunal acting under delegated powers of the Chamber President, may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal the party must seek permission to appeal from the First – Tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Information about the appeal procedure can be forwarded to you on request.

J Todd

Legal Member

Date

1/2/18